

a. The contractor, with regard to the work performed by him after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations.

b. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color, sex, or national origin.

4. *Information and reports.*

The contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. *Incorporation of provisions.*

The contractor will include these additional required contract provisions in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or orders, or instructions issued pursuant thereto. The contractor will take such action with respect to any subcontract, procurement, or lease as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance: *Provided, however*, That, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor, supplier, or lessor as a result of such directed action, the contractor may request the State to enter into such litigation to protect the interest of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

6. *Sanctions for noncompliance.*

In the event of the contractor's noncompliance with sections 1 through 5 above, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to.

a. Withholding of payments to the contractor under the contract until the contractor complies, and/or

b. Cancellation, termination or suspension of the contract in whole or in part.

[40 FR 49088, Oct. 21, 1975]

APPENDIX D TO SUBPART B OF PART 633—FEDERAL-AID PROPOSAL NOTICES

NOTICES TO PROSPECTIVE FEDERAL-AID CONSTRUCTION CONTRACTORS

I. *Certification of nonsegregated facilities.*

(a) A Certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 FR 7439, May 19, 1967) on Elimination of Segregated Facilities (is included in the proposal and must be submitted prior to the award of a Federal-aid highway construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause).

(b) Bidders are cautioned as follows: By signing this bid, the bidder will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in this proposal. This certification provides that the bidder does not maintain or provide for his employees facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the bidder will not maintain such segregated facilities.

(c) Bidders receiving Federal-aid highway construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, will be required to provide for the forwarding of the following notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

NOTICE TO PROSPECTIVE SUBCONTRACTORS AND MATERIAL SUPPLIERS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

(a) A Certification of Nonsegregated Facilities is required by the May 9, 1967, Order of the Secretary of Labor (32 FR 7431, May 19, 1967) on Elimination of Segregated Facilities, which is included in the proposal, or attached hereto, must be submitted by each subcontractor and material supplier prior to the award of the subcontract or consummation of a material supply agreement if such

subcontract or agreement exceeds \$10,000 and is not exempt from the provisions of the Equal Opportunity clause.

(b) Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in the subcontract or material supply agreement. This certification provides that the subcontractor or material supplier does not maintain or provide for his employees facilities which are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the subcontractor or material supplier will not maintain such segregated facilities.

(c) Subcontractors or material suppliers receiving subcontract awards or material supply agreements exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

#### II. Implementation of Clean Air Act.

(a) By signing this bid, the bidder will be deemed to have stipulated as follows:

(1) That any facility to be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as by Pub. L. 91-604), Executive order 11738, and regulations in implementation thereof (40 CFR part 15, is not listed on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

(2) That the State highway department shall be promptly notified prior to contract award of the receipt by the bidder of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

## PART 635—CONSTRUCTION AND MAINTENANCE

### Subpart A—Contract Procedures

#### Sec.

- 635.101 Purpose.
- 635.102 Definitions.
- 635.103 Applicability.
- 635.104 Method of construction.
- 635.105 Supervising agency.
- 635.106 Use of publicly owned equipment.
- 635.107 Participation by disadvantaged business enterprises.

- 635.108 Health and safety.
- 635.109 Standardized changed condition clauses.
- 635.110 Licensing and qualification of contractors.
- 635.111 Tied bids.
- 635.112 Advertising for bids and proposals.
- 635.113 Bid opening and bid tabulations.
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- 635.115 Agreement estimate.
- 635.116 Subcontracting and contractor responsibilities.
- 635.117 Labor and employment.
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- 635.120 Changes and extra work.
- 635.121 Contract time and contract time extensions.
- 635.122 Participation in progress payments.
- 635.123 Determination and documentation of pay quantities.
- 635.124 Participation in contract claim awards and settlements.
- 635.125 Termination of contract.
- 635.126 [Reserved]
- 635.127 Agreement provisions regarding overruns in contract time.

### Subpart B—Force Account Construction

- 635.201 Purpose.
- 635.202 Applicability.
- 635.203 Definitions.
- 635.204 Determination of more cost effective method or an emergency.
- 635.205 Finding of cost effectiveness.

### Subpart C—Physical Construction Authorization

- 635.301 Purpose.
- 635.303 Applicability.
- 635.305 Physical construction.
- 635.307 Coordination.
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### Subpart D—General Material Requirements

- 635.401 Purpose.
- 635.403 Definitions.
- 635.405 Applicability.
- 635.407 Use of materials made available by a public agency.
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- 635.411 Material or product selection.
- 635.413 Guaranty and warranty clauses.
- 635.417 Convict produced materials.

AUTHORITY: Sec. 1503 of Pub. L. 109-59, 119 Stat. 1144; 23 U.S.C. 101 (note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; Sec. 1041 (a), Pub. L. 102-240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.48(b).

EDITORIAL NOTE: Nomenclature changes to part 635 appear at 67 FR 75924, Dec. 10, 2002.